

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RECEIVED

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ROBBIE AUTERY and SHANE FULMER, )

Plaintiffs, )

v. )

KEVIN DAVIS in his official capacity as )  
Sheriff of Chilton County, Alabama, and )  
individually, )

Defendant. )

DEBRA P. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO.

2:08-CV-41

**DEMAND FOR JURY TRIAL**

**COMPLAINT FOR RELIEF UNDER 42 U.S.C. § 1983**

I.

**JURISDICTION**

1. This Court has jurisdiction of this action as a federal question pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

II.

**PARTIES**

2. The Plaintiff, Robbie Autery ("Autery"), is an adult resident of Shelby County, Alabama and a former Deputy Sheriff in Chilton County, Alabama.

3. The Plaintiff, Shane Fulmer ("Fulmer"), is an adult resident of Chilton County, Alabama and a former Deputy Sheriff in Chilton County, Alabama.

4. Kevin Davis ("Sheriff Davis") is the duly elected Sheriff of Chilton County, Alabama, and held the office of Sheriff at all times relevant hereto.

## II.

### FACTS

5. On January 15, 2002, the Alabama House of Representatives passed HB69, local legislation affecting Chilton County, Alabama. The Senate passed the act on February 19, 2002, and it thereafter became law. A copy of the Act is attached hereto as Exhibit 1 and made a part hereof as if fully set out herein ("hereinafter "Act").

6. In November, 2006, Kevin Davis was elected Sheriff of Chilton County, Alabama and took office in January, 2007.

7. The Act provides for a civil service merit system for certain employees of the Office of the Sheriff of Chilton County, Alabama, including the Plaintiffs in this case.

Section 4 provides as follows:

All employees to whom this act applies shall be governed by merit system rules and regulations governing dismissals, suspensions, lay-offs, and terminations, adopted and administered by the board. Presently employed persons shall remain in their respective employments, but nothing herein shall be construed to prevent or preclude the removal of an employee for cause as provided herein.

8. Section 5(a) creates a merit system board for the Office of the Sheriff of Chilton County which is to become effective upon the passage of the Act and is to be composed of three members, one appointed by the Chilton County Commission, one appointed by the Chilton County Sheriff, and one appointed jointly by the Commission and the Sheriff. At no time since the adoption of the Act, has any Sheriff of Chilton County appointed a member of the board or participated in an appointment or otherwise

performed any duties imposed by the Act. Neither the merit system nor the board has been established.

9. No sheriff of Chilton County has performed the duties required of him by the Act. Sheriff Davis has also failed to perform such duties or to appoint a member of the board as required by Section 5(a)(2) and has failed to cooperate with the Chilton County Commission in jointly naming another member of the board as required by Section 5(a)(3).

10. The Plaintiffs aver that Sheriff Davis has failed and refused to make the appointments required by the Act because he desires to make personnel decisions for the office of sheriff without any interference by the said board or compliance with the requirements of Section 4 of the Act. Sheriff David wrongfully demoted and disciplined Plaintiff Fulmer without cause or hearing and wrongfully disciplined Plaintiff Autery without cause or hearing. On September 10, 2007, Sheriff Davis fired Shane Fulmer and Robbie Autery without cause or hearing. The Plaintiffs were demoted, disciplined, and fired by Sheriff Davis arbitrarily and capriciously, for unconstitutional reasons, without cause, without hearing, and without compliance with the merit system rules and regulations governing dismissals and termination adopted and administered by the board. The Plaintiffs were demoted, disciplined, and fired by Sheriff Davis because of their exercise of free speech rights in opposing Sheriff Davis in the campaign in which he was elected and in reporting on various illegal or unethical practices of Sheriff Davis to the Chilton County Commission and the Alabama Attorney General. The termination was

thus in violation of Plaintiffs' rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

11. Plaintiffs further aver that Sheriff Davis has established a policy of taking arbitrary adverse personnel actions in the office of sheriff of Chilton County affecting employees of the sheriff's office intended by the Act to be protected from such actions.

12. Plaintiffs claim damages for their wrongful termination and pray for restoration to their former jobs with back pay and benefits as the result of their unlawful discharge and termination by Sheriff Davis. Plaintiffs have been active in canvassing members of the Chilton County Commission to set in place the board and the regulations specified in the Act. They have also discussed with the Alabama Attorney General's office unethical self dealing in public funds by Sheriff Davis. In addition, Plaintiffs supported Sheriff Davis' opponent in the last election. Sheriff Davis retaliated against Plaintiffs for these exercises of their constitutional rights under the First, Fifth and Fourteenth Amendments by disciplining, demoting, and terminating them.

### **III.**

#### **CAUSES OF ACTION**

##### **COUNT ONE**

13. Plaintiffs adopt all of the allegations of this Complaint as a part of this Count One as if fully set out herein.

14. Plaintiffs pray that pursuant to 42 U.S.C. § 1983 this Court will award Plaintiffs compensatory and punitive damages against Sheriff Davis in his individual capacity in an amount to be set by the jury and will grant Plaintiffs such equitable and

injunctive relief against Sheriff Davis in his official capacity as they may in the premises be entitled, all for the violation of Plaintiffs' rights under the First, Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs pray that this Court will award Plaintiffs' attorney's fees and costs of this action.

15. Plaintiffs seek both legal and equitable relief in this Count, the equitable relief against Sheriff Davis in his official capacity and the legal relief in his individual capacity. Plaintiffs request attorney's fees and costs.

### **COUNT TWO**

16. Plaintiffs adopt all of the allegations of this Complaint as a part of this Count Two as if fully set out herein.

17. Plaintiffs pray that pursuant to 42 U.S.C. § 1983 the Court will award Plaintiffs damages in the form of back pay and benefits for their said wrongful termination and discharge and for such other damages as the jury may determine as a result of Sheriff Davis' arbitrary and capricious conduct in disciplining, demoting, and terminating Plaintiffs in retaliation for Plaintiffs' exercise of their constitutional rights under the First, Fifth, and Fourteenth Amendments.

18. Plaintiffs seek both legal and equitable relief in this Count, the equitable relief against Sheriff Davis in his official capacity and the legal relief in his individual capacity. Plaintiffs request attorney's fees and costs.

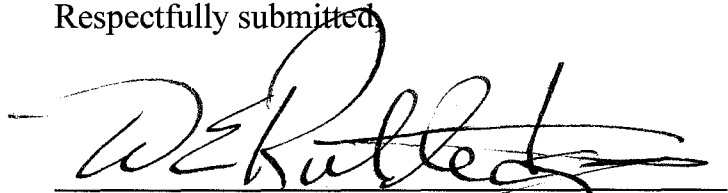
### **COUNT THREE**

19. Plaintiffs adopt all of the allegations of this Complaint as a part of this Count Three as if fully set out herein.

20. Plaintiffs pray that this Court will pursuant to 42 U.S.C. § 1983 order Sheriff Davis in his official capacity to comply with and implement the Act immediately by entering a mandatory permanent injunction. Plaintiffs pray the Court will grant such other equitable relief as appropriate.

21. Plaintiffs seek both legal and equitable relief in this Court, the equitable relief against Sheriff Davis in his official capacity and the legal relief in his individual capacity. Plaintiffs request attorney's fees and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Rutledge', written over a horizontal line.

William Eugene Rutledge (ASB-7707-r67w)  
Attorney for Plaintiffs


A handwritten signature in black ink, appearing to read 'Greg Yaghmai', written over a horizontal line.

Gregory F. Yaghmai (ASB-2411-h67g)  
Attorney for Plaintiffs

OF COUNSEL:

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yaghmai@rylaw.net

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY.

  
William Eugene Rutledge

PLAINTIFFS' ADDRESSES:

Robbie Autery  
158 Belvedere Place  
Alabaster, AL 35007

Shane Fulmer  
115 County Road 941  
Clanton, AL 35045

DEFENDANT'S ADDRESS:      **SERVE DEFENDANT BY CERTIFIED MAIL**

Sheriff Kevin Davis  
Chilton County Sheriff's Department  
500 2<sup>nd</sup> Avenue North  
Room 204  
Clanton, AL 35045

# EXHIBIT “1”



1 HB69  
2 39947-2  
3 By Representative Martin (N & P)  
4 RFD: Local Legislation  
5 First Read: 08-JAN-2002  
6 PFD 01/07/2002

HB69

1  
2 Enrolled, An Act,

3 Relating to Chilton County; providing for a civil  
4 service merit system for certain employees of the office of  
5 the sheriff.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. This act shall apply only in Chilton  
8 County.

9 Section 2. As used in this act, the following words  
10 have the following meanings:

11 (a) BOARD. The merit system board created by this  
12 act.

13 (b) COUNTY. Chilton County.

14 (c) EMPLOYEE. Any law enforcement officer, radio  
15 operator, jailer, and law enforcement support personnel, not  
16 excepted by Section 3 of this act, who is employed by the  
17 sheriff.

18 (d) MERIT EMPLOYEE. Any employee who shall have  
19 completed one year of probationary employment.

20 Section 3. This act applies to all law enforcement  
21 officials and employees employed by the Office of Sheriff of  
22 Chilton County except the chief deputy.

23 Section 4. All employees to whom this act applies  
24 shall be governed by merit system rules and regulations  
25 governing dismissals, suspensions, lay-offs, and terminations,

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1 adopted and administered by the board. Presently employed  
2 persons shall remain in their respective employments, but  
3 nothing herein shall be construed to prevent or preclude the  
4 removal of an employee for cause as provided herein.

5 Section 5. (a) There is created a merit system board  
6 for the Office of the Sheriff of Chilton County, which shall  
7 become effective upon passage of this act and shall be  
8 composed of three members appointed as follows:

9 (1) One member appointed by the Chilton County  
10 Commission.

11 (2) One member appointed by the Chilton County  
12 Sheriff.

13 (3) One member appointed by agreement of the Chilton  
14 County Commission and the Chilton County Sheriff.

15 (b) The original members shall serve for terms of  
16 one, two, and four years, as determined by the drawing of  
17 lots. Thereafter, all members shall serve for a period of four  
18 years. No person shall be appointed to the board unless he or  
19 she is a resident and qualified elector of Chilton County and  
20 over the age of 21 years.

21 (c) Members of the board shall take the  
22 constitutional oath of office, which shall be filed in the  
23 office of the probate judge. Vacancies on the board shall be  
24 filled for the unexpired term of the vacant position in the  
25 same manner as original appointments. The members of the board

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1 shall elect a chair and secretary from among their members.  
2 Any member of the board who becomes a candidate for, or is  
3 elected or appointed to, another public office of profit must  
4 vacate his or her office as a member of the board. No board  
5 member shall be an elected official, appointed employee, or  
6 employee of the county or any municipal government.

7 (d). Each member of the board shall serve without  
8 pay.

9 Section 6. (a) The board shall fix the times for its  
10 regular meetings and it may hold special, adjourned, or called  
11 meetings at any time. A majority of the members of the board  
12 shall constitute a quorum for the transaction of business. All  
13 meetings of the board shall be held in the Chilton County  
14 Courthouse. The board may prescribe rules governing its  
15 procedure provided the rules are not inconsistent with this  
16 act.

17 (b) The board shall keep minutes of its meetings and  
18 a record of all business transacted by it. Its records, except  
19 those which the rules of the board require to be held  
20 confidential for reasons of public policy, shall be open for  
21 inspection by any resident of the county at all reasonable  
22 times.

23 Section 7. The Chilton County Commission shall  
24 provide the board with materials and secretarial help when  
25 needed during meetings and shall assign an area from time to

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1 time for the board meetings. It shall also provide filing  
2 cabinets and storage space for the board and shall pay all  
3 expenses incurred by the board from the general fund of the  
4 county, when a claim therefor is submitted and approved by the  
5 Chilton County Commission.

6 Section 8. All appointments of employees to which  
7 this act applies, other than temporary appointments, shall be  
8 probationary for one year from the date of appointment. A  
9 probationary employee may be discharged by the sheriff at his  
10 or her pleasure at any time before the expiration of one year  
11 from his or her appointment. After the employee has served for  
12 one year in the position to which he or she was originally  
13 appointed or employed, the employee shall become a merit  
14 employee.

15 Section 9. Whenever a new sheriff is elected or  
16 appointed, he or she may appoint any person as his or her  
17 chief deputy sheriff, provided the person meets the minimum  
18 standards for law enforcement officers as prescribed by the  
19 general laws of the state. The person holding the position of  
20 chief deputy sheriff immediately preceding the appointment of  
21 a chief deputy may be terminated without benefit of the  
22 provisions of this act.

23 Section 10. The sheriff may suspend, without pay, a  
24 merit employee for any personal misconduct or fact affecting  
25 or concerning his or her fitness or ability to perform his or

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1 her duties in the public interest. In the event a merit  
2 employee is suspended without pay for more than 10 days in any  
3 one year, he or she shall be entitled to a public hearing by  
4 the board upon written demand filed within five days from the  
5 date of the order of suspension. If, after hearing, the board  
6 determines that the action of the appointing authority was not  
7 with good cause, the suspension shall be revoked.

8 Section 11. (a) The sheriff may remove, discharge or  
9 demote any merit employee who is directly under the sheriff,  
10 provided that within five days a report in writing of the  
11 action is made to the board, giving the reason for the  
12 removal, discharge, or demotion. The employee shall have 10  
13 days which to appeal to the board from the time of his or her  
14 notification of removal, discharge, or demotion. If an appeal  
15 is filed, the board shall thereupon order the charges or  
16 complaint to be filed forthwith in writing, if not already  
17 filed, and shall hold a hearing de novo on the charges. No  
18 merit employee shall be removed, discharged, or demoted except  
19 for some personal misconduct or fact rendering his or her  
20 further tenure harmful to the public interest, or for some  
21 cause affecting or concerning his or her fitness or ability.  
22 If the employee's removal, discharge, or demotion is appealed  
23 to the board, then the same will become final only upon  
24 affirmation by the board after a hearing where the employee  
25 has been given an opportunity to face his or her accusers and

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1 be heard in his or her own defense. Pending a hearing, the  
2 affected employee may be suspended and after the hearing the  
3 board may order the employee reinstated, demoted, removed,  
4 discharged, or suspended, or take any other disciplinary  
5 action as in their judgment is warranted by the evidence and  
6 under the law. In all cases, the decision of the board shall  
7 be reduced to writing and entered in the record of the case  
8 and shall include the board's findings of facts upon which its  
9 decision is based.

10 (b) The board may administer oaths, take  
11 depositions, certify official acts, and issue subpoenas to  
12 compel the attendance of witnesses and production of papers  
13 necessary as evidence in connection with any hearing,  
14 investigation, or proceeding within the purview of this act.  
15 The sheriff or some other law enforcement officer of the  
16 county shall serve all processes of the board. In the case a  
17 person refuses to obey a subpoena, the board may invoke the  
18 aid of the Circuit Court of Chilton County, to order that the  
19 testimony or evidence be produced. Upon proper showing, the  
20 court shall issue a subpoena or order requiring the person to  
21 appear before the board and produce all evidence and give all  
22 testimony relating to the matter in issue. A person who fails  
23 to obey a subpoena or order may be punished by the court for  
24 contempt. The fees of witnesses for attendance and travel  
25 shall be the same as fees for witnesses in the Circuit Court

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1 of Chilton County, and the fees shall be paid from the  
2 treasury or the county in a case involving an employee of the  
3 sheriff's department.

4 (c) In all proceedings before the board, the board  
5 may employ an attorney to appear before the board and  
6 prosecute all charges instituted by the sheriff when requested  
7 or directed to do so and to give any legal advice and legal  
8 assistance to the board as may be requested. The county  
9 attorney of Chilton County or the attorney for the appointing  
10 authority that is removing, discharging, demoting, or firing  
11 the employee may serve in this capacity.

12 (d) Any person aggrieved by a decision of the board  
13 may appeal that decision to the Circuit Court of Chilton  
14 County within 30 days from the rendition of the decision by  
15 the board. Review by the Circuit Court shall be without a jury  
16 and be confined to the record and a determination of the  
17 questions of law presented. The board's findings of fact shall  
18 be final and conclusive.

19 Section 12. Each employee may exercise his or her  
20 right as a citizen to express his or her opinion and to cast  
21 his or her vote. No employee shall receive any appointment or  
22 advancement as a reward for his or her support of a candidate  
23 for office of a political party nor shall he or she be  
24 dismissed, suspended, or reduced in rank or pay as punishment



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1 for his or her failure to support any candidate for political  
2 office.

3 Section 13. Any merit employee who willfully  
4 violates any provision of this act, or any rule or regulation  
5 issued in pursuance hereof, shall be dismissed from service  
6 under the system and shall not be appointed or reemployed for  
7 two years.

8 Section 14. All employees to which this act applies  
9 shall be covered by the merit system within one year from the  
10 effective date of this act.

11 Section 15. The provisions of this act are  
12 severable. If any part of this act is declared invalid or  
13 unconstitutional, that declaration shall not affect the part  
14 which remains.

15 Section 16. All laws or parts of laws which conflict  
16 with this act are repealed.

17 Section 17. This act shall become effective upon the  
18 adoption of a local constitutional amendment to the  
19 Constitution of Alabama of 1901, relating to Chilton County  
20 and authorizing a civil service merit system for employees in  
21 the Office of Sheriff.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 15-JAN-2002.

Greg Pappas  
Clerk

Senate

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19-FEB-2002

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Passed

Court Name: U S DISTRICT COURT - AL/M  
Division: 2  
Receipt Number: 4602003410  
Cashier ID: cstrecke  
Transaction Date: 01/17/2008  
Payer Name: RUTLEDGE AND YAGHMAI

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CIVIL FILING FEE  
For: RUTLEDGE AND YAGHMAI  
Case/Party: D-ALM-2-08-CV-000041-001  
Amount: \$350.00

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CHECK  
Remitter: RUTLEGE AND YAGHMAI  
Check/Money Order Num: 1096  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

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DALM208CV41-WC

RUTLEDGE AND YAGHMAI

3800 COLONNADE PKWY STE 490

BIRMINGHAM, AL 35243